

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2462 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

Nos. 1 to 5 No

ASHABEN BHASKAR RAO BANDKAR

Versus

STATE OF GUJARAT

Appearance:

MR MURALI N DEVNANI for Petitioner
MR SP HASULKAR, AGP for Respondent No.1
MR HH PATEL, AGP for Respondents No.2 and 3.

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 09/07/1999

ORAL JUDGEMENT

On 21.4.1999 an order was passed by this Court in this writ petition issuing notice to the respondents to show cause as to why this Special Civil Application may not be admitted, heard and finally decided at the

admission stage. Notices have been served on the respondents but no counter affidavit has been filed. Learned Counsel for the parties have been heard. The writ petition can be finally disposed of at the admission stage.

The prayer of the petitioner is that her application for appointment on compassionate ground as Peon in police department under the direct control of District Superintendent of Police, Bhavnagar, respondent no.2 may be considered.

The brief facts giving rise to this petition are as under :

The husband of the petitioner was working with the respondent no.2 in the police department with effect from 29.9.1979. He had put in more than fifteen years of service. On 18.5.1994, while he was on duty and was going from Anjar to Bhavnagar in the vehicle of the police department along with some co-employees, he met with an accident near village Tagdi. He received serious injuries and all his limbs became ineffective. He was given treatment but with no result. For about three years he was lying ill and invalid with the injuries sustained in the accident and ultimately he succumbed to the injuries on 14.10.1997. Thereafter, the petitioner applied for appointment on compassionate grounds which was rejected by the respondent no.2 through the order contained in Annexure "A", that because the husband of the petitioner was placed on invalid pension during the period he remained invalid, hence, he should not be treated as an employee who died in harness. Only on this ground, the application of the petitioner was rejected. It is, therefore, this petition with the prayer that the aforesaid order contained in Annexure "A" be quashed and the petitioner be given appointment on compassionate grounds.

In the absence of the counter affidavit, it can be said that there is no denial of what is alleged in this writ petition. The learned Counsel for the respondent however, contended that because the husband of the petitioner did not die in the course of employment hence, his dependents are not entitled to appointment on compassionate grounds. Neither this contention can be accepted nor the contention in Annexure "A" can be sustained. No doubt, neither in the writ petition nor in any Annexure the date of birth of the petitioner's husband or the date of superannuation is given nor there is concrete material on record from which it can be

ascertained that when the husband of the petitioner expired on 14.10.1997, he had not attained the age of superannuation. However, there is intrinsic material on record on this point. The first material is the age of the petitioner on the date of presentation of the petition. She was aged only 33 years. Consequently it cannot be said that she was married to a person having discrepancy in age by about 22 to 30 years. Further, it is stated in the list of events that the petitioner is having three small children aged about 5, 7 and 8 years. This also shows that the husband of the petitioner was not an old man who died after attaining the age of superannuation. In para 3 of the petition, it is mentioned that the husband of the petitioner was appointed on 29.9.1979 and he served with the police department for more than fifteen years. This also indicates that the husband of the petitioner did not render full service to his credit and he expired at prematured age.

From the writ petition, it further appears that after sustaining serious injuries in the accident on 18.5.1994, the limbs of the husband of the petitioner were paralysed. Despite treatment he could not improve and looking to his condition the police department placed him on invalid pension. This action of placing the deceased husband of the petitioner on invalid pension does not tantamount to nor can be equated with that he was retired from service. If on compassionate ground, he was placed on invalid pension looking to his serious injuries, it can safely be said that he was very well under employment, though instead of paying full salary and wages to the husband of the petitioner he was granted pension during the period of his ailment. Since he died on 18.5.1994 in harness, as such, the application of the petitioner for employment on compassionate ground could not be rejected on this technical ground. It is, therefore, a fit case where the impugned order should be quashed. However, no direction can be issued by this Court to the respondent no.2 for giving immediate appointment to the petitioner in as much as the respondent no.2 has to examine on merits whether the petitioner fulfills all other requirements for giving employment on compassionate grounds. The writ petition is therefore allowed with direction to the respondent no.2, to reconsider the application of the petitioner for employment on compassionate grounds in place of her deceased husband who died in harness in accordance with rules within a period of one month from today and pass suitable orders. No order as to cost.

Direct service is permitted.

Sd/-

(D.C.Srivastava,J)

m.m.bhatt